



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

September 13, 1993

Ms. Catherine A. Ghiglieri  
Commissioner  
Texas Department of Banking  
2601 N. Lamar Boulevard  
Austin, Texas 78705-4294

OR93-555

Dear Commissioner Ghiglieri:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), Government Code chapter 552.<sup>1</sup> Your request was assigned ID# 18402.

The Texas Department of Banking (the "department") has received two requests for certain information contained in a branch bank application. Specifically, the requestors seek a copy of the public portions of the application submitted by the Bank of South Texas to establish a branch in Alice, Texas. You advise us that portions of the application have been made available to the requestors. You claim, however, that the information submitted to us for review is excepted from required public disclosure by sections 552.101, 552.110, and 552.112 of the act.

We understand that the branch bank application at issue here was submitted to the department pursuant to article 342-903, V.T.C.S., of the Texas Banking Code. Section 3.91 of Title 7 of the Texas Administrative Code governs the application procedure for the establishment of branch banks pursuant to article 342-903. It provides, in part, that a "public file shall be established by the Texas Department of Banking in the case of each application." Section 3.91 also provides:

*That file shall consist of the application with supporting data and supplementary information, except for material deemed by the commissioner, in accordance with applicable law, to be confidential, such as trade secrets normally not available through commercial publication or other information made confidential*

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<sup>1</sup>We note that V.T.C.S. article 6252-17a was repealed by the 73d Legislature. Acts 1993, 73d Leg. ch. 268, § 46. The Open Records Act is now codified in the Government Code at chapter 552. *Id.* § 1. The codification of the Open Records Act in the Government Code is a nonsubstantive revision. *Id.* § 47.

*under the Texas Open Records Act or the Texas Banking Code. In addition, the public file shall contain all data and information submitted by interested persons or entities in favor of or in opposition to such application, excluding any material deemed by the commissioner, in accordance with applicable law, to be confidential. Information may be deemed confidential and withheld from the public file only upon request of the person or entity submitting the information. All factual information submitted to or obtained by the Texas Department of Banking staff shall also be made part of the public file, unless deemed confidential by the commissioner. In no event shall information required by statute or regulation to be treated as confidential be made a part of a public file. [Emphasis added.]*

7 T.A.C. § 3.91(f)(4).

In essence, the department claims that the documents submitted to us for review are confidential under the Texas Banking Code and are therefore not part of the public file or available to the public under the Open Records Act. Specifically, you claim that subsection (a) of article 342-210, V.T.C.S., of the Texas Banking Code, makes the submitted information confidential. You claim that the submitted documents are therefore excepted from required public disclosure under section 552.101 of the act, which excepts "information deemed confidential by law, either Constitutional, statutory, or by judicial decision."

Article 342-210(a) of the Texas Banking Code provides in part:

all information obtained, either directly or indirectly, by the Banking Department relative to the financial condition of any bank or bank holding company other than call reports and profit and loss statements, whether obtained through examination or otherwise, except published statements, and all files and records of said Department relative thereto shall be confidential, and shall not be disclosed by the Banking Commissioner or any officer or employee of said Department.

The documents submitted to us for review is information obtained by the department and concerns the financial condition of a bank. The exclusions from confidentiality set forth in article 342-210(a) are not applicable here. We agree with your contention that the submitted information is made confidential by law. Therefore, the submitted information is excepted from required public disclosure by section 552.101 of the act and may not be released. As we resolve this matter under section 3(a)(1), we need not address the applicability of sections 552.110 and 552.112 at this time.

If you have questions about this ruling, please contact this office.

Yours very truly,



Loretta R. DeHay  
Assistant Attorney General  
Open Government Section

LRD/GCK/jcc

Enclosures: Submitted documents

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ID# 18522

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